

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Time Warner Cable for	)	WC Docket No. 06-55
Declaratory Ruling That Competitive	)	
Local Exchange Carriers May Obtain	)	
Interconnection Under Section 215 of	)	
the Communications Act of 1934, as	)	
Amended, to Provide Wholesale	)	
Telecommunications Services to VoIP	)	
Providers	)	

**COMMENTS OF  
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

The Western Telecommunications Alliance (“WTA”) submits its comments opposing Time Warner Cable’s (“TWC’s”) petition for a declaratory ruling that it may employ third parties as a device to circumvent the interconnection requirements and procedures established by Sections 251 and 252 of the Communications Act of 1934, as amended, in order to enjoy the rights and benefits furnished by those provisions to competitive local exchange carriers (“CLECs”), without TWC itself becoming legally subject to any of the responsibilities or obligations of a CLEC. Contrary to TWC’s assertions, the declaratory ruling sought by it will not promote or advance telecommunications competition. Rather, TWC’s petition should be dismissed or denied because: (a) declaratory relief is premature and inappropriate at this time, and would prejudice ongoing Commission rulemakings and state proceedings wherein a more complete record has been or will be developed; (b) the procedures, rights and obligations of Sections 251 and 252 are clearly limited to incumbent and competing carriers providing local exchange and exchange access service; and (c) TWC is free at this time to choose to operate as a CLEC or as a non-regulated information services provider, but must not be allowed to game the

statutory Section 251/252 system to tilt the competitive telecommunications playing field substantially in its favor.

## I

### **The Western Telecommunications Alliance**

The Western Telecommunications Alliance is a trade association that represents approximately 250 rural telephone companies operating in the twenty-four states located west of the Mississippi River. WTA members are generally small independent local exchange carriers (“ILECs”) serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange.

## II

### **The Requested Declaratory Ruling Is Premature and Inappropriate**

Section 1.2 of the Commission’s Rules provides for the issuance of a declaratory ruling, on motion or on the Commission’s own motion, to terminate a controversy or remove uncertainty. However, the Commission previously has refused to issue declaratory rulings in situations where the record in a proceeding needs to be more fully developed and weighed before a final determination is made. See, e.g., *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, Notice of Proposed Rulemaking and Declaratory Ruling, 69 FR 56956 (August 9, 2004), at par. 34.

The facts underlying TWC’s petition are somewhat confusing and unclear. TWC’s Digital Phone service appears to be functionally equivalent to wireline telephone service, including the use of “commercially available handsets” and “existing landline telephone numbers,” the availability of call waiting, caller ID and other traditional adjunct voice features,

and access to operator services and directory assistance. TWC Petition, at n. 4. TWC appears initially to have sought or obtained CLEC status and/or certification for its Digital Phone service in some states, but to have abandoned or terminated its CLEC authorizations and responsibilities after the Commission's *Vonage*<sup>1</sup> order. TWC Petition, at p. 3 and n. 2. TWC has entered into some sort of business relationship with MCI and Sprint, which appears to include the purchase of transport, interexchange and/or private carrier services by TWC from those entities. *Id.* at p. 4. It also appears that TWC employs MCI and Sprint as some sort of agents or contractors to negotiate interconnection agreements with incumbent local exchange carriers on TWC's behalf. *Id.* However, it is clear that MCI and Sprint do not provide local exchange service or exchange access service to TWC's customers in South Carolina, Nebraska or any other state that might be affected by the declaratory ruling sought by TWC.

What TWC is asking herein is for MCI and Sprint to be authorized to use the Section 252 procedures and to negotiate Section 251(b) and/or Section 252(c) interconnection agreements<sup>2</sup> on TWC's behalf, even though TWC has terminated its CLEC status and even though MCI and Sprint are not themselves providing either local exchange service or exchange access in the subject service areas. This would give TWC all of the rights and benefits of a CLEC, without incurring any CLEC responsibilities or obligations.

In WC Docket No. 04-36, the Commission has undertaken a rulemaking to consider and determine the appropriate legal and regulatory treatment of Voice over Internet Protocol

---

<sup>1</sup> *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion And Order, 19 FCC Rcd 22404 (November 12, 2004).

<sup>2</sup> Section 251(a) sets forth a general duty of telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Neither Section 251(c)(1) nor Section 252(a)(1) nor any other provision of Section 251 or Section 252 requires or references negotiation of Section 251(a) arrangements, or establishes particular rights, benefits, obligations or responsibilities with respect to Section 251(a). See *Core Communications, Inc. and Z-Tel Communications, Inc.*, Order on Reconsideration, 19 FCC Rcd 8447 (May 4, 2004), at n. 44.

("VoIP") and other IP-enabled services, or categories of such services. Among other issues, this rulemaking proposes to address whether various types or categories of IP-enabled service would be subject to traditional common carrier regulation under Title II of the Communications Act, including interconnection rights and obligations under Sections 251 and 252. *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (March 10, 2004), at par. 73.

The Commission should continue to develop the record in the WC Docket No. 04-36 proceeding, and issue a well-considered, reasonable and equitable determination of the regulatory status and treatment of existing or reasonably foreseeable IP-enabled services (including TWC's Digital Phone service) vis-à-vis the wireline and wireless telecommunications services with which they compete. Given TWC's claims that its service is functionally equivalent to wireline local exchange service, the Commission should subject it to the same interconnection, intercarrier compensation and universal service obligations as CLECs and other local exchange carriers ("LECs"). What the Commission should not do is rush to judgment at this time by issuing a premature declaratory ruling on the contrived TWC/MCI/Sprint "arrangement" that may prejudice or complicate its resolution of the significant and important regulatory issues in WC Docket No. 04-36.

In addition, it is WTA's information and belief that Sprint is pursuing in the appropriate Nebraska courts an appeal of the Nebraska Public Service Commission order to which TWC objects (but to which TWC was not a party). The Commission also should refrain from prejudging the issues and outcome of the Nebraska state court appeal.

### III

#### **Section 251 and 252 Rights and Obligations Are Limited to Local Exchange Carriers**

Sections 251(b) and 251(c), as well as the agreement, arbitration and pricing procedures of Section 252, were intended to facilitate the entry of competing local exchange carriers into local telephone service markets across the country. See *Iowa Utilities Board v. FCC*, 120 F3d 753 (8<sup>th</sup> Cir. 1997); and *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366 (1999).

The legislative history of the 1996 Act indicates that the initial version of Section 251 in Senate Bill 652 was intended to impose “a duty on local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection *with other telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service* [emphasis added].” Conference Report, Report 104-458 (January 31, 1996), at p. 117. The Senate Bill expressly excluded from the scope of Section 251 “interconnection arrangements between local exchange carriers and telecommunications carriers under Section 201 of the Communications Act for the purpose of providing interexchange service.” *Id.* The House amendment to Section 251 likewise was intended to address “the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent’s network facilities.” *Id.* at p. 120.

Section 3(26) of the Communications Act defines a “local exchange carrier” as “any person that is engaged in the provision of telephone exchange service or exchange access.” It is clear from the statutory language, legislative history, and interpretative judicial decisions that: (a) Section 251(b) defines the interconnection rights and responsibilities of competing ILECs and

CLECs with respect to each other; (b) Section 251(c) defines the interconnection rights of CLECs with respect to ILECs and the interconnection responsibilities of ILECs with respect to CLECs entering their local service areas; and (c) Section 252 defines the procedures for negotiating, arbitrating, pricing, and approving Section 251(b) and 251(c) interconnection agreements between competing ILECs and CLECs. In other words, Sections 251(b) and 251(c) and Section 252 do not confer any rights, benefits, responsibilities or obligations upon information service providers, interexchange carriers, transport providers, or other entities that do not provide local exchange service and/or exchange access service in the subject local exchange area.

In local service markets where TWC applies for and obtains CLEC status (or re-applies for or re-establishes its former CLEC status), it should be entitled to the full rights as well as the full responsibilities of a CLEC under Sections 251 and 252 of the Act. It appears fully within TWC's power and discretion to obtain such CLEC status and regulatory treatment at this time for its Digital Phone service if it wishes.

However, at least until such time as the Commission establishes the regulatory status of TWC's Digital Phone service and other VoIP and IP-enabled services, TWC is not entitled to any CLEC rights under Sections 251 and 252 as long as it elects to reject its former CLEC status and characterize itself instead as a non-regulated information service provider. Likewise, TWC may not evade or avoid the Section 251 and 252 eligibility requirements by purchasing transport, interexchange or private carrier services from MCI and Sprint, or by employing MCI and Sprint as its agents or contractors to negotiate interconnection agreements with various ILECs. Whereas MCI and Sprint may be telecommunications carriers, they are not providing the local exchange service or exchange access service required to qualify as LECs or CLECs for Section

251 and 252 purposes in the subject Nebraska, South Carolina and other potentially affected service areas.

#### IV

##### **TWC Should Not Be Given Additional Substantial Competitive Advantages**

Efficient and equitable competition requires that all providers of competing services operate on the same level playing field subject to equivalent or reasonably comparable regulation.

As long as the regulatory status of VoIP providers remains unsettled and TWC is able to characterize its Digital Phone service as a non-regulated information service, it is not subject to the resale, number portability, dialing parity, right-of-way access and reciprocal compensation obligations of ILECs and CLECs. It also does not appear to have any of the interconnection or intercarrier compensation obligations of a telecommunications carrier, or to be required to contribute to universal service mechanisms.<sup>3</sup>

If TWC is not subject to the regulatory responsibilities and obligations of a CLEC, it should not be permitted to circumvent the language and intent of Sections 251 and 252 to enjoy the interconnection rights and benefits of CLECs. This would give TWC a substantial and unwarranted competitive advantage not only over rural ILECs but also over CLECs that play by the rules and accept their regulatory responsibilities.

---

<sup>3</sup> Whereas TWC claims that it “continues to comply” with certain telecommunications carrier requirements, TWC Petition, at n. 2, it is not clear to what extent and why it does so, or how long it will continue. TWC’s termination of its CLEC authorizations and obligations in various states after issuance of the *Vonage* order indicates that it is not likely to comply for long with any regulatory requirements that are not clearly mandated.

**Conclusion**

TWC's request for declaratory ruling should be denied, and it should not be permitted directly or indirectly to enjoy the Section 251 and 252 interconnection rights and benefits of CLECs without subjecting itself to CLEC responsibilities and obligations. Until the Commission resolves the regulatory status of VoIP providers in WC Docket No. 04-36, TWC may elect to characterize itself as a CLEC or an information service provider, but must not be permitted to game the system to grab the benefits of both and to avoid the obligations of either.

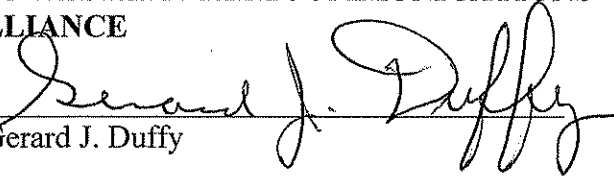
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW (Suite 300)  
Washington, DC 20037  
Phone: (202) 659-0830  
Facsimile: (202) 828-5568  
Email: [gjd@bloostonlaw.com](mailto:gjd@bloostonlaw.com)

Respectfully submitted,

**THE WESTERN TELECOMMUNICATIONS  
ALLIANCE**

By

Gerard J. Duffy



Dated: April 6, 2006